

### **REMARKS**

This responds to the Office Action dated on November 15, 2006.

Claim 11 is amended. Claims 11-54 are pending in this application.

The preamble of claim 11 was amended (~~A checkweigher An integrity checking system~~) to correct a typographical error. It is now consistent with the claims which depend from it, as they all refer to a checkweigher system. It is respectfully requested that the amendment be entered to place the claims in better condition for appeal. No new issues are introduced by such amendment.

#### **§112 Rejection of the Claims**

Claim 27 was rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The Office Action indicates that it is not clear what is performing each of the method elements. This rejection is respectfully traversed. First, no such identification of “what is” performing method steps is required for clarity under ‘112. In fact, adding structure to method elements may blur the line between method and apparatus claims, which may not be acceptable under the law. Applicant respectfully request citation to any MPEP section or case law in support of such identification being required, or withdrawal of the rejection.

The rejection is also traversed because the claim in fact does identify the “what is” performing the elements. The preamble states that the method uses “logic independent from the checkweigher logic”. Each element also clarifies that it is either receiving something from the checkweigher logic, or is independent of the checkweigher logic. Thus, one of skill in the art would clearly understand the claimed subject matter.

#### **§103 Rejection of the Claims**

Claims 11-13, 15-18, 20, 21, 27-34, 53 and 54 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Nakagawa (U.S. Patent No. 6,711,874 B1) in view of Feurstein et al.

(U.S. Patent No. 4,011,155). This rejection is respectfully traversed at least on the basis that the references alone or combined do not teach or suggest each and every element of the claims.

The Final Office Action indicates that Nakagawa discloses a checkweigher, but not sensors to detect skewed packages. It should be noted that Nakagawa also does not describe any form in independent integrity checking logic as claimed. Nakagawa, starting at Line 36 in Col. 9, running to Col. 11 describes the checkweigher operation. There is no discussion of checking the operation of the checkweigher.

Feurstein et al., is cited as sensing items such as packages and rejecting those that are not of adequate length from a conveyor stream. The suggestion/motivation to combine Feurstein et al., with Nakagawa is “to reject packages that are defective regarding length or skew of a package as it is presented to the checkweigher.” This suggestion can only be based on hindsight, as Nakagawa does not suggest checking a checkweigher and Feurstein et al., is concerned with wrapping and labeling packages correctly, and does not include any reference to a checkweigher. Thus, one of average skill in the art could not glean from any combination of these references a need or desire for checking the operation of a checkweigher and incorporating sensors from Feurstein et al., into Nakagawa, and further ensuring that logic associated with the sensors was separate from the checkweigher logic. A proper *prima facie* case of obviousness has not been established, and the rejection should be withdrawn.

### **Final Office Action Response to Arguments**

The Final Office Action on page 10, in the Response to Arguments section indicates “...that Nakagawa discloses independent circuitry (10 and 50) that operates independently of the checkweigher. For example, see col. 7, lines 27-55, which mentions that controller (50) receives accept and reject signals from the checkweigher logic (30), which is directly connected to the weight detector (305). In col. 7 lines 43-47, warning means (55) generates a message/communication to the operator that the checkweigher is operating incorrectly.”

This statement is respectfully traversed. The cited language in fact teaches the opposite. The elements in Nakagawa are not independent as claimed, but rather “...are connected with a remote controller 50 so that they can be operatively associated with each other.” Col. 7, lines 31-33. Further, no messages in Nakagawa were found that the checkweigher is operating

incorrectly. A proper *prima facie* case of obviousness has not been established since the references do not teach or suggestion each and every element. The rejection should be withdrawn.

Claim 14 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Nakagawa (U.S. Patent No. 6,711,874 B1) in view of Feurstein et al. (U.S. Patent No. 4,011,155) and further in view of Komori et al. (U.S. Patent No. 5,990,422). Claim 14 depends ultimately from claim 11 which is believed allowable.

Claim 19 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Nakagawa (U.S. Patent No. 6,711,874 B1) in view of Feurstein et al. (U.S. Patent No. 4,011,155) and further in view of Nozaki et al. (U.S. Patent No. 4,822,647). Claim 19 depends from claim 11 which is believed allowable.

Claims 22, 35, 37, 38, 40-42 and 44 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Nakagawa (U.S. Patent No. 6,711,874 B1) in view of Komori et al. (U.S. Patent No. 5,990,422). These claims are believed to distinguish from Nakagawa for at least the same reasons as does claim 11. Komori et al., does not provide the elements that are lacking from Nakagawa. It is respectfully requested that the rejection be withdrawn.

Claims 23, 36, 39, 43 and 45-52 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Nakagawa (U.S. Patent No. 6,711,874 B1) in view of Komori et al. (U.S. Patent No. 5,990,422) and further in view of Feurstein et al. (U.S. Patent No. 4,011,155). This rejection is respectfully traversed. These claims are believed to distinguish from Nakagawa for at least the same reasons as does claim 11. Neither Komori et al. nor Feurstein et al., provide the elements that are lacking from Nakagawa. It is respectfully requested that the rejection be withdrawn.

**CONCLUSION**

Applicant respectfully submits that the claims are in condition for allowance and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicant's attorney (612) 373-6972 to facilitate prosecution of this application.

If necessary, please charge any additional fees or credit overpayment to Deposit Account No. 19-0743.

**Reservation of Rights**

In the interest of clarity and brevity, Applicant may not have addressed every assertion made in the Office Action. Applicant's silence regarding any such assertion does not constitute any admission or acquiescence. Applicant reserves all rights not exercised in connection with this response, such as the right to challenge or rebut any tacit or explicit characterization of any reference or of any of the present claims, the right to challenge or rebut any asserted factual or legal basis of any of the rejections, the right to swear behind any cited reference such as provided under 37 C.F.R. § 1.131 or otherwise, or the right to assert co-ownership of any cited reference. Applicant does not admit that any of the cited references or any other references of record are relevant to the present claims, or that they constitute prior art. To the extent that any rejection or assertion is based upon the Examiner's personal knowledge, rather than any objective evidence of record as manifested by a cited prior art reference, Applicant timely objects to such reliance on Official Notice, and reserves all rights to request that the Examiner provide a reference or affidavit in support of such assertion, as required by MPEP § 2144.03. Applicant reserves all rights to pursue any cancelled claims in a subsequent patent application claiming the benefit of priority of the present patent application, and to request rejoinder of any withdrawn claim, as required by MPEP § 821.04.

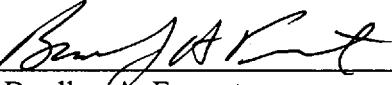
Respectfully submitted,

MICHAEL G. POTEREK ET AL.

By their Representatives,

SCHWEGMAN, LUNDBERG, WOESSNER & KLUTH, P.A.  
P.O. Box 2938  
Minneapolis, MN 55402  
(612) 373-6972

Date 1-16-2007

By   
Bradley A. Forrest  
Reg. No. 30,837

CERTIFICATE UNDER 37 CFR 1.8: The undersigned hereby certifies that this correspondence is being filed using the USPTO's electronic filing system EFS-Web, and is addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on this 16 day of January, 2007.

Lisa Posorek

Name



Signature